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In this chapter. . .

This chapter deals only with the recordkeeping requirements of the Family Division of the Circuit Court in child protective proceedings. Information concerning records used in investigations of suspected abuse or neglect may be found in Sections 2.16–2.18.

22.1 Family Division Records

MCR 3.903(A)(24) defines “records” as pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders. These items are contained in the so-called “legal file.” Confidential information is contained in the so-called “social file.” For a general description of the purposes and contents of “juvenile court” records, see AO 1985-5, as amended by AO 1988-3, Part II, 430 Mich xcix (1988). A “file” is “a repository for collection of the pleadings and other documents and materials related to a case. MCR 3.903(A)(8).

A “register of actions” is “the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards.” MCR 3.903(A)(25). The clerk of the court must permanently maintain a register of actions for each case except a civil infraction case. MCR 8.119(A) and (D)(1).^{*} The Michigan Supreme Court Case File Management Standards and MCR 8.119(D)(1)(c) require a register of actions to contain at least the following:

- case number;
- case type (code);
- case name;
- attorneys;
- date filed;
- fees paid (when applicable);

- offense;
- judge assigned (code);
- process issued and returned and date of service;
- date and title of each “filed” document;
- date of each event, type of action, and result;
- date of scheduled trials, hearings, and all other appearances or reviews;
- judge at adjudication (code);
- date adjudicated;
- how adjudicated (code);
- location of papers filed apart from the case folder (e.g. exhibits, video tapes, audio tapes, or court reporter log); and
- fees for officers, transportation, and jurors (if not maintained in the accounting system).

The county clerk is the clerk of the court for the Family Division and keeps the records and indexes of actions. MCL 600.1007.

In *In re Lapeer County Clerk*, 469 Mich 146 (2003), the Lapeer County Clerk filed a complaint requesting superintending control based upon a Lapeer Circuit Court Local Administrative Order that assigned duties of the county clerk to the staff of the Family Division of the Circuit Court. The Michigan Supreme Court dismissed the complaint for superintending control but, under its authority to prescribe rules of practice and procedure, provided guidance for courts in crafting future administrative orders.

The Michigan Supreme Court found that the clerk of the court *must* have care and custody of the court records and must perform ministerial duties that are noncustodial as required by the court. In regards to the clerk’s custodial duties, the Michigan Supreme Court stated:

“[W]e conclude that the clerk has a constitutional obligation to have the care and custody of the circuit court’s records and that the circuit court may not abrogate this authority. See *In the Matter of Head Notes to the Opinions of the Supreme Court*, 43 Mich 640, 643; 8 NW 552 (1880) (‘the essential duties [of a constitutional officer] cannot be taken away, as this in effect would result in the abolishment of the office . . .’).

* * *

The circuit court clerk's role of having the care and custody of the records must not be confused with *ownership* of the records. As custodian, the circuit court clerk takes care of the records for the circuit court, which owns the records. Nothing in the constitutional custodial function gives the circuit court clerk independent ownership authority over court records. Accordingly, the clerk must make those records available to their owner, the circuit court. The clerk is also obligated to make the records available to members of the public when appropriate." *Lapeer County Clerk, supra* at 158, 160. (Emphasis in original.)

The Court stated the following in regards to the noncustodial ministerial function of the clerk:

"[W]e hold that prescribing the exact nature of a clerk's noncustodial ministerial functions is a matter of practice and procedure in the administration of the courts. Accordingly, the authority to prescribe the specific noncustodial ministerial duties of the clerk of the circuit court lies exclusively with the Supreme Court under Const 1963, art 6, §5.

As such, the judiciary is vested with the constitutional authority to direct the circuit court clerk to perform noncustodial ministerial duties pertaining to court administration as the Court sees fit. This authority includes the discretion to create duties, abolish duties, or divide duties between the clerk and other court personnel, as well as the right to dictate the scope and form of the performance of such noncustodial ministerial duties." *Lapeer County Clerk, supra* at 164.

22.2 Access to Confidential Files

Access to court records. The general rule is that "[r]ecords of the juvenile cases, other than confidential files, must be open to the general public." MCR 3.925(D)(1). Records created before June 1, 1988, are open only by court order to persons with a legitimate interest. MCL 712A.28(1).

Confidential files. Confidential files are defined in MCR 3.903(A)(3)–(4). Those rules state in relevant part as follows:

"(3) Confidential file means

(a) that part of a file made confidential by statute or court rule, including, but not limited to,

* * *

*See Section 9.4.

(iii) the testimony taken during a closed proceeding pursuant to MCR 3.925(A)(2) and MCL 712A.17(7);*

*See Section 13.5.

(iv) the dispositional reports pursuant to . . . MCR 3.973(E)(4)*;

* * *

“(b) the contents of a social file maintained by the court, including materials such as

(i) youth and family record sheet;

(ii) social study;

(iii) reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school, and police reports);

(iv) Family Independence Agency records;

(v) correspondence;

(vi) victim statements.”

*See Section 22.1, above, for the definition of “records.”

Petitions that the court has not authorized for filing do not fall within the definition of “records” in MCR 3.903(A)(24)* and are therefore “confidential files.”

If a document from a juvenile’s confidential or “social” file is admitted into evidence, that document becomes a “record,” as the definition of “record” includes “exhibits.” MCR 3.903(A)(24).

Access to confidential files. MCR 3.925(D)(2) provides that confidential files shall only be made accessible to persons found by the court to have a legitimate interest. In determining whether a person has a legitimate interest, the court must consider:

- the nature of the proceedings;
- the welfare and safety of the public;
- the interests of the juvenile; and
- any restriction imposed by state or federal law.

*See Sections 2.16–2.18.

Restrictions imposed by state and federal law* include 20 USC 1232g(b)(1) and MCL 600.2165, educational records; MCL 330.1748, records of mental health services; 42 USC 290dd—2(a) and MCL 333.6111, records of federal

or state drug or alcohol abuse prevention programs; and MCL 333.17752, records of prescriptions.

“Person with a legitimate interest” includes a member of a Foster Care Review Board. MCL 712A.28(4).

Court records and confidential files are not subject to requests under the Freedom of Information Act, as the judicial branch of government is specifically exempted from that act. MCL 15.232(d)(v).

Examination of records and reports under the Indian Child Welfare Act. The ICWA provides each party in a foster care placement or a proceeding involving the termination of parental rights with the right to examine “all reports or other documents filed with the court upon which any decision with respect to such action may be based.” 25 USC 1912(c).

22.3 Records of Proceedings in Family Division

MCR 3.925(B) states that “[a] record of all hearings must be made.” That subrule also requires that a record of all proceedings on the formal calendar be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded. “Formal calendar” means judicial proceedings other than a preliminary inquiry or a preliminary hearing. MCR 3.903(A)(10).

If a record of a hearing is made by a recording device, transcription of the hearing is unnecessary unless there is a request by an “interested party.” MCL 712A.17a states that such a recording remains a permanent record of the court. However, MCL 600.2137(3) requires courts to maintain untranscribed recordings for 15 years in a felony case and 10 years in other cases; if a record has been transcribed, the court need maintain a recording for only one year.

22.4 Access to Records of Closed Protective Proceedings by Persons With a Legitimate Interest

If a hearing is closed under MCL 712A.17, the records of that hearing shall only be open by order of the court to persons having a legitimate interest. MCL 712A.28(2).*

*See Section 22.2, above (access to confidential files).

22.5 Destruction of Family Division Records and Files

MCR 3.925(E) governs the destruction of Family Division files and records. MCR 3.925(E)(1), which sets forth a general rule regarding destruction of files and records, states as follows:

“The court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.”

A “register of actions” is “the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards.” MCR 3.903(A)(25). See Section 22.1, above, for a description of the contents of the register of actions.

MCR 3.925(E)(3) sets forth the rule applicable to child protective proceeding records:

“(3) Child Protective Files and Records.

“(a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.

“(b) All orders terminating parental rights to a child must be kept as a permanent record of the court.”